

Mark & Jody Kablack
46 Poplar Street
07-8 & 9

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, FEBRUARY 27, 2007

The Board consisted of:

Jeffrey P. Klofft, Chairman
Elizabeth A. Taylor, Clerk
Jonathan G. Gossels
Nancy G. Rubenstein
Richard D. Vetstein, Associate

Notice was published in the Sudbury Town Crier on February 8 and 15, 2007, posted, mailed and read at this hearing.

Mr. Klofft, Chairman, explained the requirements necessary to substantiate the granting of a special permit and a variance. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Mark Kablack was present to represent a petition to allow the transfer of 500 s.f. of lot area to his neighbors Paul and Nancy Rodriguez, 38 Poplar Street who were not able to be present this evening. Mr. Kablack submitted a letter dated February 27, 2007 from Ms. Rodriguez stating support for this application. Also submitted were several photographs which Mr. Kablack said explain the impetus for this application. He said his house and the Rodriguez's house have co-existed for approximately 80 years and was part of a 1920 subdivision plan comprised of 5,000 s.f. lots. The Kablack property consists of four lots for a total of 22,800 s.f. The Rodriguez lot contains 5,930 s.f.

This past summer the Rodriguez's wanted to take a tree down that was thought to be more or less on the property line between both houses. The close proximity of the tree to their house was causing problems with their foundation.

Mr. Kablack said he agreed that the tree should be removed. Following that, the Rodriguez's began the process of shoring up their foundation wall which resulted in a considerable project. The pictures show the side of the house and the excavation that was required.

In the process of doing the excavation, surveyors for both owners identified the side property line which turned out to be 5 feet from the Rodriguez house. This meant that all of the equipment and mounding of the soil had to occur on the Kablack property in order to do the work.

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In addition, Mr. Kablack said the 5-foot separation impacts the Rodriguez's ability to ever routinely maintain their home. The angle of a ladder going from the second story out to the ground would have to come onto the Kablack property.

As a result, Mr. Kablack suggested the sale or transfer of at least 5 feet so that the Rodriguez's side yard would then be 10 feet as opposed to 5 feet. The survey plan prepared for the Kablacks, and submitted with the application, depicts a 5-foot wide by 100-foot deep strip running along the length of the property line between the two houses. This would provide more area for access and maintenance.

Mr. Kablack explained that in order to accomplish this, relief is required from the ZBA because his property is already nonconforming in terms of area and setbacks and this transfer would make it less nonconforming. He said he submitted an application for special permit with an alternative application for variance in the event the Board determines Section 2420 of the Zoning Bylaws cannot be applied in this instance. Special permits are available for a change in use or structural alteration. This is not a structural alteration but might be interpreted as a change in use in the sense that the use is decreasing by virtue of the transfer.

However, if the Board felt constrained from granting relief through a special permit, the alternative variance application has been submitted.

Mr. Klofft felt that before proceeding, the issue of whether a special permit or variance applies should be resolved.

Discussion followed. Mr. Kablack presented arguments for a special permit. However, Mr. Klofft had difficulty justifying this as a use under Section 2420. He asked whether this could not be resolved by an easement.

Mr. Kablack said it could, but felt ZBA relief would be clearer and set a permanent mark for both today's owners and any future owners. He said although an easement could address this situation, it does not address the issues of liability.

Ms. Taylor preferred the variance route rather than an easement, particularly because of the liability issue.

The general consensus was that this fell under the category of a variance.

A question was asked regarding precedent. Mr. Kablack presented a copy of the tax map in which it appeared that the Rodriguez property was the only 5,000 s.f. lot in the area. Most of the lots consist of accumulations of two or more 5,000 s.f. parcels. Referring to his application, he elaborated on his statements which he felt satisfied the criteria necessary to grant a variance.

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Mr. Klofft asked if there were any abutters present who wished to speak. There were none.

Mr. Klofft suggested Mr. Kablack withdraw his application for special permit and that the Board move forward on the variance. Mr. Kablack agreed to do so and requested a withdrawal.

A motion was made, seconded and unanimously voted to accept a withdrawal without prejudice.

There was no further input and the public hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Mark & Jody Kablack, owners of property, a Variance from the provisions of Section 2600 of the Zoning Bylaws, to allow the transfer of 500 s.f. of lot area, which will result in a decrease in lot area of an existing nonconforming lot, property located at 46 Poplar Street, Residential Zone A-1."

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioner requires a variance to transfer a 5X100-foot strip from his property to his neighbor. In order to grant a variance, four criteria must be met. With regard to special conditions relating to soil, shape or topography, the Board finds there to be special conditions with regard to shape resulting from the 1926 plan which created 5,000 s.f. lots in this area. Today, many of those lots have been combined to create larger lots; however, the petitioner's lot, which is an accumulation of 4 parcels, is quite long by today's standards and allows for limited flexibility on the property. The adjacent property, to which the 500 s.f. would be transferred, contains slightly over 5,000 s.f. and is trapezoidal in shape.

With regard to hardship, the Board finds that a substantial hardship to both property owners would result if the Bylaws were to be literally enforced. The activities which occurred over the past summer would have resulted in the inability of the neighbor to continue with maintenance without permission from the petitioner. Additionally, this maintenance resulted in a substantial interference and partial loss of use of the petitioner's yard during that time as was evidenced by the photographs submitted at the hearing. More importantly, for future maintenance, this hardship would be equally applied to both the petitioner and the neighbor who have to be able to carry out normal day-to-day maintenance of their properties.

Granting the variance will result in no substantial detriment to the public good, nor would it nullify or substantially derogate from the intent or purpose of the Bylaw. The purpose of the

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transfer is to simply allow the neighbor the ability to be able to maintain the side of their house without having to infringe on the petitioner's property.

Jeffrey P. Klofft, Chairman

Elizabeth A. Taylor, Clerk

Jonathan G. Gossels

Richard D. Vetstein, Associate

Jonas D.L. McCray, Associate

James & Sue Idelson
96 Morse Road
07-10

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James & Sue Idelson
96 Morse Road
07-10

James Idelson was present to represent a petition for renewal of Special Permit 04-7 to maintain an 80-foot amateur radio tower at 96 Morse Road. The structure was erected in 1998. There have been no issues associated with the structure which Mr. Idelson explained has been maintained and in good repair.

No changes to the conditions were being requested.

Mr. Gossels felt a 5-year renewal period to be appropriate for this renewal.

The Board had no further questions. No abutters were present. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant James S. & Sue E. Idelson, owners of property renewal of Special Permit 04-4, granted under the provisions of Section 2632 of the Zoning Bylaws, to maintain an 80-foot amateur radio tower, property located at 96 Morse Road, Residential Zone A-1, provided that:

1. Installation shall conform to all applicable building codes and wired in accordance with UL Standards.
2. Childproof shielding, no less than 10 feet in height, shall be maintained at the base of the tower.
3. This permit is non-transferable and will expire in five (5) years on February 27, 2012, and the Board will consider renewal upon receipt of proper application on or before that date."

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioner requires a special permit to operate an amateur ham radio hobby from his home. This tower has been in operation since 1998 with no complaints from the neighborhood. The Board finds this structure is in an appropriate location, not detrimental to the neighbors. It is not lighted or offensive, as no smoke, noise or other nuisance is produced. Adequate and appropriate facilities have been provided for proper operation as well as ongoing maintenance to insure compliance with the conditions of the permit. Further, the Board finds a five-year renewal period to be appropriate in this case.

Jeffrey P. Klofft, Chairman

Elizabeth A. Taylor, Clerk

James & Sue Idelson
96 Morse Road
07-10

Jonathan G. Gossels

Nancy G. Rubenstein

Richard D. Vetstein, Associate

Stephen & Ellen Gallagher
44 Willis Lake Drive
07-11

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Mr. Klofft, Chairman, explained that this case involves an appeal under M.G.L., Chapter 40A, Section 15 in which the petitioners are appealing an Order or Decision of the Building Inspector regarding the use of the property located at 44 Willis Lake Drive.

Attorney Robert Dionisi was present, representing the petitioners, Stephen and Ellen Gallagher, also present, in an appeal of a Determination of the Building Inspector that the dwelling at 44 Willis Lake Drive has been converted into a 2-family unit in violation of Section 2210 of the Zoning Bylaws.

Mr. Dionisi said the basis for the appeal is a letter from the Building Inspector dated December 28, 2006 which notes a violation and requires either a variance from the ZBA for the use of a second dwelling or removal of the apartment in the front.

Mr. Dionisi said this property has been used as a 2-family since at least 1961, and perhaps prior to that. He said one of the problems associated with presenting this appeal to the Board is that many of the town records have been either destroyed or lost.

By way of a historical perspective, Mr. Dionisi would say that this is a structure that has been on the site since about the 1920s when it was then used as a dance hall. The earliest record of its being used as anything other than a dance hall was back in 1948 when the ZBA granted a partial use of the property as a grocery store as a non-transferable right of the owner at the time.

The owner sold the property in 1949. In 1955 there was a fire, and due to an existing building permit, the structure was enlarged.

The property was sold and in 1961 the current owners sought approval from the ZBA to have the right to run the grocery store transferred to them. Further, in 1961, the owners took out a building permit to establish a bedroom and kitchen, essentially to establish a second unit. There was also a grocery store and there was a building permit taken out in 1961, which Mr. Dionisi said has not made it into the town records; however, he was recently able to obtain a copy and submitted it for the record.

Mr. Dionisi said this is the earliest record he saw in which the town, through the building permit process, has issued a sanction as a 2-family at this site.

Mr. Klofft asked whether those rooms were added to the structure, or as a second structure.

Mr. Dionisi said it was added to the structure.

Mr. Klofft asked what was in that permit to indicate it created a second unit.

Mr. Dionisi said this goes to the history. Continuing to 1967, he said the existing owners of the property applied to the ZBA to have a liquor license added to the use of the property. That application was denied.

Mr. Dionisi said from the earliest records, the List of Persons for 1967 and 1968, it can be determined that two residents lived on the property, one at #42, the other at #44.

In 1972, Mr. & Ms. Gallagher purchased the property. At that time Francis White was the Building Inspector in Sudbury. In 1975, Mr. & Mrs. Gallagher received a letter from Mr. White essentially indicating what Mr. Kelly stated - that there is no valid existing use of the property as a 2-family. Since Mr. White is now deceased, Mr. Dionisi has had to rely on papers, documents, conversations and/or other documents that he may have seen. In 1976, Mr. White wrote a second letter stating, "I must apologize for the claim of a two-family dwelling." Mr. &

Stephen & Ellen Gallagher
44 Willis Lake Drive
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Mrs. Gallagher have relied on that letter of 1976 and the property has been used as a multi-family since 1976.

There have been some improvements to the property. Mr. Dionisi submitted some old photographs which show what it looked like prior to the Gallagher's improvements. However, through December of 2006, when the letter was received by Mr. Kelly, the Gallagher's have been relying on Mr. White's letter and it's been used as a 2-family.

Mr. Klofft asked what the situation was when Mr. Gallagher purchased the house in 1972.

Stephen Gallagher said in 1972 the store had been closed – it still had the appurtenances of the store such as the air conditioner, cooler, etc. In addition, there was a rear apartment which was approximately 5 rooms, and then on the side there was a separate apartment with 2 rooms and a bath. At that point he said he decided he would just rent out the premises. He has never lived there. At the same time he said he was never able to rent out the store and gave up on the store. He said there are records in the town showing different people living in different units at different times. Tenants are generally not on the list of persons which is why there may be a gap.

Ms. Taylor asked whether what formerly was a store is now a living area.

Mr. Gallagher replied that it is now and is the front unit. He said there are 2 units with separate septic systems and utilities. Most recently, he has continued with that separation only to be told by Mr. Kelly that a 2-family was not appropriate.

Building Inspector James Kelly said the issue came about a few months ago with a request for installation of a meter. Application was made to the Wiring Inspector who called NSTAR, and NSTAR put the separate meter on. Mr. Kelly said he has received indications in the past that this was a house being used as a multi-family home. However, the files did not indicate any change use change from what was permitted to a multi-use.

Mr. Kelly said he would like to see if the attorney for the owners can explain how this got to be where it is today. He reiterated that there are no records in the Building Department to indicate that this is an approved change of use. He said he supplied the Board and the owners' attorney with all the documents; however, he felt a very crucial letter is missing – and that would be why the information Francis White had was erroneous. If he had just added a sentence that this use is permitted, that would have been the end of it. He didn't.

Mr. Gallagher said just today he found a 1961 permit that was authored by the Building Department. It was in the file but was not there when he and Mr. Kelly had looked in it in the past. Today, when he went to get copies of other documents, he that noted that this record was in

the file. He felt this was a result of a misfiling resulting from the numbering system assigned back in the 1960s.

Mr. Klofft asked whether there are records to indicate that Kelton Wagner Jr. owned the property at that time.

Mr. Gallagher said there were. He said since the 1960s, the Assessor's Office has assessed it as 2 apartments and one store. At the present time they don't have the records going back to 1961, but at the time when he purchased it, they had records that established that from 1961 it had been assessed as 2 units with a store.

Mr. Klofft asked whether it was assessed as 3 separate units – 2 units and a store separately.

Mr. Gallagher said it was. Mr. Dionisi said it is included as part of this application. In addition there was a 1961 ZBA application that was filed by Kelton Wagner where he applied for a transfer of the grocery store license. Mr. Dionisi had a copy of the Decision of the Board.

Ms. Taylor asked if a variance would have been required for use as a 2-family.

Mr. Dionisi replied that a use variance would have been required. However, a use variance was never sought because there was a valid building permit which allowed for the 2-family use.

Ms. Taylor said the building permit can't grant a variance.

Mr. Dionisi said it could – if 10 years lapses. In addition, he felt that when one has an opinion from the zoning enforcing agent, one can rely on that opinion. He said the appeal that Mr. & Ms. Gallagher are making this evening is that there is an opinion from the Zoning Enforcement Agent under the statute. That opinion was relied on by the Gallaghers – there was no appeal taken within 30 days of that opinion.

Without making judgment, Mr. Klofft said that that one sentence made by Francis White is somewhat ambiguous in terms of precisely what was meant.

Mr. Gallagher said he took Mr. White through the property in 1976 and Mr. White observed that there were 2 units. There were no alterations – everything was existing. Then, when he brought to Mr. White's attention the 1961 approval putting in a second kitchen, that established it as a separate apartment even though the words weren't used.

Mr. Dionisi added that equally important is the fact that Mr. White took no action to enforce a single family residence.

Stephen & Ellen Gallagher
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Mr. Gallagher said in 1980 that Mr. White had sent out a document and referred to 42-44 Willis Lake Drive as the address, which he felt clearly establishes that Mr. White was aware of the 2-family status.

Mr. Klofft asked whether anyone in the audience wished to speak.

Mary Bigwood, 40 Willis Lake Drive, abutter, said she has lived there all her life. She said the people who lived on that property were Kelton & Beulah Wagner. Kelton Sr. owned the store and they lived behind it. This was before the addition was put on. Then their son, married – plus there was the fire – and they moved and put a mother-in-law apartment in and Kelton Jr. and his wife lived in the back and the mother and father lived to the left hand side of the house. And the front was still the store – that big large room.

Mr. Klofft asked whether Ms. Bigwood was saying that this was an in-law at that point.

Ms. Bigwood said she was.

Mr. Gossels asked whether the reason for the second kitchen was for the in-law apartment.

Ms. Bigwood said it was.

Mr. Klofft said this might be the reason there wasn't a variance on the record. If it was created as an in-law, perhaps there would not have been a need for a variance because it wouldn't have been turning it into a 2-family. However, there is no record – but there is oral testimony that it was an in-law.

Mr. Dionisi said in the minutes of the 1961 application, where Mr. Wagner attempted to get a liquor license, he indicated that his parents lived down the street at a different address.

Ms. Bigwood said his parents never lived down the street. She said Kelton Wagner Sr. and his wife Beulah lived in the back, and when his son got married, and they built the apartment on the side, the in-law apartment – they moved in there and Kelton Jr. and his wife Corinne Palardi, who lived on Birchwood Avenue originally, moved in with her husband in the back with her two children.

Jose Garcia, 41 Willis Lake Drive, abutter, submitted copies of a 1999 assessment. He wanted to point out that this assessment lists the house as having a zero value and the report notes that it should be torn down. He said the entire assessment is based on the value of the land. It doesn't mention anything about a 2-family.

He also read, and submitted as part of the record, an excerpt from a police report of February 1991 from Sgt. Todd Eadie who was responding to a break in at this property. As part of the report, Sgt. Eadie noted that the house was basically unlivable, with numerous holes in the roof where water had come in and froze on the ground. There was no running water in the house, but someone had a space heater going in the bathroom. The bedroom looked as if someone may have been sleeping there recently. It appears the place should be condemned.

Mr. Garcia offered this record as evidence, and his experience from having lived across the street for over nine years, that there is no way anyone, let alone 2 families, could have lived there. He contended that there has not been a 2-family use there for at least 8 years. He also submitted earlier photographs of the house pointing out that the center entrance is enumerated as #42 Willis Lake Drive. Currently it's enumerated at #44 Willis Lake Drive. He would say that if there ever was a 2-family use, it has been abandoned – that if it is contended that this has been a 2-family use, Form 1040, Schedule E showing rental information should be provided.

Ronald MacInnis, 11 Basswood Avenue, said he has lived there for 40+ years. He said when the Keltons left, the house was probably not in very good shape, but somebody over the years did live there. One man lived in #42 for years. Mr. MacInnis had the chance to meet Mr. Gallagher on the street one day and mentioned to him the fact that there was an old gentleman who was living there. He said Mr. Gallagher's approximate response was "it doesn't pay to have a hippie in your house if you want him to make repairs." Mr. MacInnis said he never saw any construction going on in that house all that time. When he knew Kelton, there was just an in-law apartment in the back.

Mr. Gallagher submitted pictures of the property after the renovations were made. He said the property was always rented and he always collected rent from it. He said the reference to the hippie was kind of accurate – there was a fellow living there and he did collect rent from him.

Mr. Klofft asked Mr. Kelly whether the issue of the 2-family came up when the building permits were pulled for the renovations.

Mr. Kelly said it was not.

Mr. Klofft asked whether Mr. Kelly's assumption was that Mr. Gallagher was just making renovations to a single family house.

Mr. Kelly said it was – that it was basically to enclose an existing porch and to extend the roof to a gable.

Robert McCart, 67 Oakwood Avenue, resident, said he has lived in the area for 45+ years and said he always remembered there being two families living there.

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Discussion followed on a variance, or lack of one, for this property to allow for a 2-family use.

Mr. Dionisi felt that if in 1961 the Building Inspector issued a building permit to allow a second residence in the structure without the need for a variance, it was because the use was allowed and no variance was needed.

Ms. Taylor said the petitioners are of the assumption that the 1961 permit is for a second structure – all it says is that the purpose is for building a bedroom and kitchen. While a kitchen might indicate a second unit, no bathroom is listed.

Mr. Gallagher: said a bathroom is already there. In that structure that is referred to, there is no spot on that form to check off for a bathroom and so there is no record.

Mr. Klofft said if the Wagners were going to turn it into a 2-family at that point, and the Building Inspector said that at that point in time a variance would have been necessary to do that, and there's no variance on record, what proof is there that there was ever a 2-family other than the one sentence on the letter from the Building Inspector saying that he was in error.

Mr. Dionisi said there is the historical perspective that the Gallaghers have presented tonight that for over 40 years this has been a 2-family.

Mr. Gossels said from the oral testimony it sounds like originally this was an in-law which has drifted into a 2-family use.

Mr. Dionisi said even if it were an in-law, as is defined today in the bylaws, that's not what was done in 1961. If it were a family member, it's still two apartments. There was no special permit then for in-law apartments.

Mr. Kelly referred to the minutes of the 1967 ZBA hearing where Mr. Wagner stated that the only living quarters are on the first floor of the rear of the store. He questioned how the 1961 building permit could be for a second dwelling when Mr. Wagner made that statement in the minutes.

Looking at those minutes, Mr. Klofft felt the statements were very clear. He read from those minutes which said, "Mr. Moynihan asked whether there were any living quarters above the store. Mr. Wagner replied that the only living quarters are on one floor in the rear of the store."

With regard to Mr. Gallagher's statements about the apartment being in the front and side, Mr. Klofft read further from those 1967 minutes which state, "Mr. Moynihan asked how the living quarters will be segregated from the store area. Mr. Wagner replied that there is a door,

which will be locked, leading from the store to the proposed extension, as well as a separate entrance.”

With regard to Francis White’s second letter which states, “I must apologize for the claim of a 2-family dwelling”, Ms. Taylor would interpret that to mean that Mr. White saw it as a single family dwelling.

Mr. Gallagher disagreed with that interpretation noting that four years later Mr. White sent him a letter (unregistered motor vehicle violation notice) indicating the two addresses.

It appeared that no additional input would be forthcoming and the hearing was closed.

After deliberation the following motion was placed and seconded

MOTION: “To uphold a Determination of the Building Inspector dated December 28, 2006, that the dwelling at 44 Willis Lake Drive, Residential Zone A-1 has been converted to a 2-family unit in violation of Section 2210 of the Zoning Bylaws and that the owner must either obtain a variance for the use of a second dwelling or remove the apartment in the front.”

VOTED: In favor: 5 (unanimous) Opposed: 0 DECISION UPHELD

REASONS:

The Board finds that insufficient evidence has been presented to demonstrate that a lawful 2-family structure exists on this property. The 1961 building permit does not clearly state that a second apartment has been created. It merely states that a kitchen and bedroom are being added. Further, the minutes of a ZBA hearing on October 24, 1967 indicate that the current owner at that time stated that the only living quarters for this property was on the first floor to the rear of the store. There are no records permitting the change of use to a 2-family.

It is the interpretation of this Board that the letter dated March 24, 1976 from the Building Inspector indicating conversion to a 2-family dwelling in violation of the Zoning Bylaw and subsequent apology letter dated April 30, 1976 for previous claim of a 2-family, without further explanation, indicates a finding of a single-family dwelling on the property by that Building Inspector.

Relying on all information submitted, including oral testimony by all parties, it is the opinion of this Board that the Building Inspector’s Determination should be upheld; that the petitioner must either seek a variance from the ZBA for the use of a second dwelling or remove the apartment in the front.

Jeffrey P. Klofft, Chairman

Stephen & Ellen Gallagher
44 Willis Lake Drive
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Maillet Homes, Inc.
33 Victoria Road
07-12

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Michael Maillet was present to represent a petition for a Special Permit to demolish an existing residence and to construct a larger, new residence on a nonconforming lot at 33 Victoria Road.

Mr. Maillet explained that a Special Permit 07-5 was previously granted for a 3,500 s.f. house. The owner wishes to construct a 3,734 s.f. house which is larger than what was

previously granted. The house will conform to all setback requirements and will have the same front yard setback of 60 feet.

Vernon Clark, 6 Stock Farm Road, abutter, asked where the garage doors would be located. Mr. Maillet said they would be on the side facing Mr. Clark's property. Mr. Clark voiced concerns that this might result in runoff issues on his property.

Mr. Maillet explained that the pool, which is raised, will be removed resulting in the grade coming down. He said the driveway elevation will not change any more than it is now.

Mr. Klofft asked whether Mr. Maillet would be opposed to taking the runoff from the garage roof and putting it into a dry well. Mr. Maillet had no objections.

Ms. Rubenstein said there is now a much larger driveway closer to the property line.

Mr. Maillet said he could run a drainage system to the side of the driveway so that anything coming off the driveway would basically go into the drainage system into the dry well which will keep the drainage from coming onto Mr. Clark's property.

This was satisfactory to Mr. Clark.

There was no further input. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Maillet Homes, Inc., applicant, Brooks Bennett, owner of property, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 3,734 s.f., which will conform to all zoning requirements, to be constructed in the location as shown on the plan prepared by Zanca Land Surveying, Stow, MA dated January 31, 2007, which is incorporated and made part of this decision, property located at 33 Victoria Road, Residential Zone A-1, subject to the following:

1. Roof drains will be installed and all roof runoff will be diverted to dry wells. Additionally, a drainage system will be installed along the driveway to collect runoff so as not to impact the adjacent abutter.
2. This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

Maillet Homes, Inc.
33 Victoria Road
07-12

3. Construction must be completed no later than one year after commencement.

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioner requires a special permit due to the nonconforming nature of the property. The Board finds that the proposed reconstruction will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The proposed house is modest in scale and the design will be compatible with the neighborhood. The proposed location is consistent with the Board's Guidelines for Demolitions and Reconstructions.

Jeffrey P. Klofft, Chairman

Elizabeth A. Taylor, Clerk

Jonathan G. Gossels

Nancy G. Rubenstein

Richard D. Vetstein, Associate

Harold Arkoff
4 Louis Avenue
07-13

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Harold Arkoff
4 Louis Avenue
07-13

Mr. Arkoff was present to represent a petition for a Special Permit to demolish an existing residence and to construct a larger, new residence on a nonconforming lot at 4 Louis Avenue. He explained that the Board had previously granted a special permit to the Sutherlands for a 2,610 s.f. house. However, the Sutherlands will be moving and will not be constructing the house as granted by their special permit.

Mr. Arkoff said the plans he provided consist of 3,407 s.f.

Mr. Klofft noted that this application has been advertised as 2,612 s.f. In order for the Board to hear this application, it must be advertised as 3,407 s.f.

Mr. Arkoff said he has spoken with his neighbors who are in favor of his proposal. He said the revised house fits within the original building envelope with the foundation size being 60 s.f larger.

Mr. Klofft said the Board could only approve 2,612 s.f. because that was what was advertised. He suggested Mr. Arkoff withdraw his application and resubmit it with the correct amount and the Board would waive a subsequent filing fee.

Following further discussion, Mr. Arkoff reluctantly requested his application be withdrawn without prejudice.

A motion was made seconded and unanimously voted to accept a request to withdraw case 07-13 without prejudice and to waive a subsequent filing fee.

Jeffrey P. Klofft, Chairman

Elizabeth A. Taylor, Clerk

Jonathan G. Gossels

Nancy G. Rubenstein

Richard D. Vetstein, Associate

Joseph & Lisa Lentino
28 Russet Lane
07-14

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, FEBRUARY 27, 2007

The Board consisted of:

Jeffrey P. Klofft, Chairman
Elizabeth A. Taylor, Clerk
Jonathan G. Gossels
Nancy G. Rubenstein
Richard D. Vetstein, Associate

Notice was published in the Sudbury Town Crier on February 8 and 15, 2007, posted, mailed and read at this hearing.

Mr. Klofft, Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Joseph & Lisa Lentino were present to represent a petition for a Special Permit to demolish an existing residence and to construct a larger, new residence on a nonconforming lot at 28 Russet Lane. Mr. Lentino explained that they took into consideration the neighborhood when designing and locating the proposed house on the lot. The new house will replace a 1,600 s.f. ranch-style house. The driveway will be relocated from Russet Lane onto Eddy Street. After the house was originally built one of the previous owners built a one-car garage under the foundation and later on cinder blocked it up. Now, where that driveway was is just stone – there was never any formal driveway on the lot.

Mr. Gossels referred to the Demolition Guidelines. He felt there was room to move the house further back than what is proposed. Mr. Klofft added that typically, with demolitions and reconstructions, where larger 2-story houses are being constructed, the Board likes to see those houses moved further back so as not to present a looming effect.

Louis Ferro, 20 Russet Lane, next door abutter, felt that to move the house back would look odd as currently the houses on the street line up. In addition, he felt that to move the house further back might impact the privacy of his in ground pool.

Ms. Rubenstein asked for the height of the proposed house. Mr. Lentino estimated it to be approximately 31 feet.

Joseph & Lisa Lentino
28 Russet Lane
07-14

Ms. Taylor felt the house could be moved further back. She noted that as neighborhoods change to replace one-story houses with 2-story ones, locating the house further back will eliminate a looming effect and will result in a more aesthetic streetscape.

Mr. Lentino said there are several trees on the property which he would like to save. This was also considered when locating the house.

Ms. Rubenstein said the proposed house is very long and significantly larger than most of the houses in the area. It is also on a corner lot and will be very visible, which is why the Board is concerned.

Ms. Lentino said she showed the plans to the neighbors who had no objections.

Mr. Gossels said this Board has had the experience where seeing the house on paper and then after construction gives a much different perspective.

Building Inspector James Kelly said the Lentinos have brought the garage down to a single story which he felt would eliminate a looming effect on Eddy Street. He said the extension to the 2-story house on the other side is lower as well.

Further discussion followed. The Board was not convinced that the house could not be moved back further or that other options were not available. Their main concern was for the looming effect given the size and corner lot.

Mr. Kelly pointed out that the design includes a porch which is 41 feet from the front property line and 6-7 feet from where the house will begin. He said porches tend to bring the house down in that there won't be the full height of the house from 41 feet.

Given the support of the neighbors, Mr. Gossels suggested moving the house to 50 feet from the front of the porch to the property line and within the 40-foot setback requirement from Eddy Street. The Lentinos were agreeable to this.

There was no further input. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Joseph & Lisa Lentino, owners of property, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 3,500 s.f., said residence to conform to all zoning setback requirements, property located at 28 Russet Lane, Residential Zone A-1, as follows:

Joseph & Lisa Lentino
28 Russet Lane
07-14

1. The setback from Russet Lane shall be 50 feet from the corner of the porch and a setback of at least 40 feet will be maintained on Eddy Street.”
2. This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.
3. Construction must be completed no later than one year after commencement.

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioners require a special permit due to the nonconforming nature of the property. The Board finds that the proposed reconstruction will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The design of the house will be compatible with other reconstructions or alterations and the petitioners have agreed to move the house further back to further lessen the impact of the structure which will be on a corner lot. The petitioners have contacted their neighbors with regard to their proposed project; none had any objections and their immediate abutters were present to offer their support.

Jeffrey P. Klofft, Chairman

Elizabeth A. Taylor, Clerk

Jonathan G. Gossels

Nancy G. Rubenstein

Richard D. Vetstein, Associate

Kenneth Chung
19 Elsbeth Road
07-15

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, FEBRUARY 27, 2007

The Board consisted of:

Jeffrey P. Klofft, Chairman
Elizabeth A. Taylor, Clerk
Jonathan G. Gossels
Nancy G. Rubenstein
Richard D. Vetstein, Associate

Notice was published in the Sudbury Town Crier on February 8 and 15, 2007, posted, mailed and read at this hearing.

Mr. Klofft, Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Attorney Will Thompson was present, representing Kenneth Chung, also present, in a petition to demolish an existing residence and to construct a larger, new residence on a nonconforming lot at 19 Elsbeth Street.

Mr. Thompson said this is the third time Mr. Chung has been before this Board (Case 06-43). This application consists of a new plan which has been reduced from the original plan by approximately 2,000 s.f. of living area. He said Mr. Chung has worked very hard to come up with this plan and it is hoped that his efforts will be rewarded by approval of this latest plan.

While not present for the previous case, Mr. Thompson said he did read the minutes of the hearing which indicated the two concerns of the Board were with the size of the house and the shed which exists on the property.

While agreeing that the shed is large, Mr. Thompson said it is more than just a shed to the Chung family. The shed was built about ten years ago, at an extensive cost, for Mr. Chung's father-in-law who was a machinist by trade, and there is really no other place for his machines, which are valuable, to be housed. He said Mr. Chung's father-in-law still continues to go out there and work on them from time to time. To require it to be torn down would create an extensive hardship to Mr. Chung and personally to his father-in-law.

Kenneth Chung
19 Elsbeth Road
07-15

Given the closeness of the shed to the property line, Mr. Klofft asked why there was no paperwork on it. Building Inspector, James Kelly, replied that at the time of its construction, the setback requirement was 5 feet from the property line. The Bylaw has since been changed.

Mr. Thompson submitted an aerial photograph of the Chung property noting that it is a fairly secluded property. He said one of the concerns that came up earlier was that there would be changes to the landscape; however, with this proposal, the landscape will remain the same including the trees.

Mr. Thomason said the neighbors were contacted regarding this new plan and he knew of no one who was opposed to it. He submitted several letters of support from neighbors for the record.

Jessica Quirk, 29 Elsbeth Road, said she is the direct abutter to the Chungs. She was present to support this new proposal and said she had no problem with the accessory shed even though it is close to her property line.

Susan Berkowitz, 34 Bowker Drive, abutter, noted that while the house is considerably smaller, she was not sure about the large shed and other structures which are proposed to remain.

Mr. Gossels said in the previous hearings the Board had also been concerned about too many structures remaining on the lot.

Ms. Quirk said the large shed has no impact on anyone except for her, and she had no problem with its continued existence.

The Board reviewed the plans and the footprint of the proposed house as well as the height of the shed. There was no further input and the hearing was closed.

After deliberation the following motion was placed and seconded:

MOTION: “To grant Kenneth Chung, applicant, Ying Cho, owner of property, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 3,400 s.f., said residence to conform to all zoning setback requirements and to be located as shown on the plan submitted with the application which is marked as Exhibit #1 and is incorporated as part of this Decision, property located at 19 Elsbeth Road, Residential Zone A-1.”

This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

Kenneth Chung
19 Elsbeth Road
07-15

Construction must be completed no later than one year after commencement.

REASONS: The petitioner requires a special permit due to the nonconforming nature of the property. The Board finds that the proposed reconstruction will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. This application has been revised from the original proposal; the size of the proposed house has been reduced dramatically and while large, is not as large as some of the homes in the area. The Board still has concerns regarding the structures which will remain on the property, particularly a large shed; however, it recognizes that those structures legally exist. Further, the abutter who would be impacted most by this large structure has no problem with it remaining.

Letters of support from neighbors of this new proposal were submitted to the Board at this hearing. In addition, an aerial photograph of the property indicates heavy tree cover on this property which will diminish the visual impact of those existing structures.

Jeffrey P. Klofft, Chairman

Elizabeth A. Taylor, Clerk

Jonathan G. Gossels

Nancy G. Rubenstein

Richard D. Vetstein, Associate

Xiuzi Ye & Ruisheng Yu
30 Jarman Road
07-16

MINUTES OF THE PUBLIC HEARING
SUDBURY BOARD OF APPEALS
TUESDAY, FEBRUARY 27, 2007

The Board consisted of:

Jeffrey P. Klofft, Chairman

Elizabeth A. Taylor, Clerk

Jonathan G. Gossels

Nancy G. Rubenstein
Richard D. Vetstein, Associate

Notice was published in the Sudbury Town Crier on February 8 and 15, 2007, posted, mailed and read at this hearing.

Mr. Klofft, Chairman, explained the requirements necessary to substantiate the granting of a special permit. He also explained that if anyone is not satisfied with the Board's decision, they have the right to appeal to Superior Court or Land Court within twenty days after the decision has been filed with the Town Clerk, and that possible other appeals may exist under current law.

Ruisheng Yu was present to represent a petition for a Special Permit to demolish an existing residence and to construct a larger, new residence on a nonconforming lot at 30 Jarman Road. Ms. Yu explained that her family is growing and they would like to construct a larger house on their property.

The Board reviewed the plot plan and renderings submitted with the application. Mr. Gossels commented that the house is well sited and of an appropriate design and scale. The Board was in agreement.

There was no further input. No abutters were present. The hearing was closed.

The following motion was placed and seconded:

MOTION: "To grant Xiuzi Ye & Ruisheng Yu, owners of property, a Special Permit under the provisions of Section 2460B of the Zoning Bylaws, to allow demolition of an existing residence and construction of a new residence not to exceed 3,500 s.f., said residence to conform to all zoning setback requirements and to be constructed in the location as shown on a plan prepared by Zanca Land Surveying, Stow, MA, dated January 29, 2007 which is incorporated and made part of this Decision, property located at 30 Jarman Road, Residential Zone A-1."

This Special Permit shall lapse if construction has not begun, except for good cause, within 12 months following the filing of the Special Permit approval, plus such time required to pursue or await the determination of an appeal under M.G.L., Chapter 40A, Section 17.

Construction must be completed no later than one year after commencement.

VOTED: In favor: 5 (unanimous) Opposed: 0

REASONS: The petitioner requires a special permit due to the nonconforming nature of the property. The Board finds that the proposed reconstruction will not be substantially more

Xiuzi Ye & Ruisheng Yu
30 Jarman road
07-16

detrimental to the neighborhood than the existing nonconforming structure. The scale and design will be compatible with the neighborhood and is consistent with the Board's Guidelines for Demolitions and Reconstructions.

Jeffrey P. Klofft, Chairman

Elizabeth A. Taylor, Clerk

Jonathan G. Gossels

Nancy G. Rubenstein

Richard D. Vetstein, Associate

